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Supreme Court of the United States

OCTOBER TERM, 1952.

No. 721

PAUL F. SCHOLLA, *Petitioner*,

v.

LOIS T. SCHOLLA, Individually and as Next Friend of her son, Paul Frederick Scholla, Jr., and her daughter, Barbara Jean Scholla, minors, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

ELIZABETH R. YOUNG,
Counsel for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Reference Book:

Webster's New International Dictionary 5

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the District of Columbia affirming the order of the United States District Court for the District of Columbia allowing a fee to the attorney for respondent.

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the District of Columbia has not been published in a reporter at this date. That Court denied petitioner's petition for rehearing without opinion. The opin-

ion of the United States District Court for the District of Columbia is not reported.

JURISDICTION

The opinion of the United States Circuit Court of Appeals for the District of Columbia was entered on January 8, 1953. Paul F. Scholla's petition for rehearing was denied on January 26, 1953. The jurisdiction of this Court is invoked under Title 28, Section 1254, United States Code.

The decision of the lower court is violative of Title 28, Sections 1920 and 1923, United States Code. It is also violative of Sections 11-1501; 11-1502; 16-410; 16-413 and 16-415 of the District of Columbia Code. If permitted to stand, the decision in the instant case will constitute a reversal of the case of *Cahill* v. *Bryan*, 87 U.S. App. D.C. 271; 194 F. 2d 277, in which the Court of Appeals has heretofore correctly stated the law governing the general equity power of the District Court to award counsel fees.

QUESTION PRESENTED

Whether the United States District Court for the District of Columbia has the power to award counsel fees in excess of the amount authorized by Title 28, Section 1923, United States Code, to a woman divorced in a State Court (Florida) in her action thereafter brought in the District of Columbia against her former husband (a resident of the District of Columbia) for accrued alimony due her (a non-resident of the District of Columbia) and maintenance for the children (also non-residents of the District of Columbia) whose custody was awarded her by the State Court which granted the absolute divorce and awarded the alimony and maintenance for the children it committed to her care.

STATUTES INVOLVED

Title 28, Sections 1920 and 1923, United States Code; Sections 11-1501, 11-1502, 16-410, 16-413 and 16-415 District of Columbia Code.

STATEMENT

Respondent Lois T. Scholla obtained an absolute divorce from petitioner Paul F. Scholla in Florida in 1949. In that action she was awarded alimony, custody of the parties' three children, and maintenance for them. Thereafter, the oldest daughter went to live with her father.

The validity of the Florida decree is not questioned.

In 1951 Lois T. Scholla brought her action against Paul F. Scholla in the United States District Court for the District of Columbia. She asked for maintenance for the two children still living with her; judgment in her own behalf for $500 accrued alimony under the Florida decree, costs and counsel fees. At the time the action was brought Lois T. Scholla and the two minor plaintiffs were residents of Virginia; Paul F. Scholla was a resident of the District of Columbia.

The United States District Court for the District of Columbia dismissed the maintenance action for want of jurisdiction. It dismissed the claim for $500 alimony arrearages as being within the exclusive jurisdiction of the Municipal Court for the District of Columbia. The District Court then awarded Lois T. Scholla a judgment for a $250 fee to her attorney and costs. The award of costs is not questioned.

The United States Circuit Court of Appeals for the District of Columbia affirmed the dismissal of the maintenance action not, however, on the ground of want of jurisdiction, but holding that maintenance for the children had been adjudicated by the Florida decree, which is *res judicata* and entitled to full faith and credit by the courts of the District of Columbia. It affirmed the dismissal of

the $500 alimony claim on the ground stated by the District Court.

The Appellate Court sustained the award of the $250 counsel fee on the ground that the general equity powers of the District Court permit an award of counsel fees in behalf of a wife suing for maintenance notwithstanding dismissal of the complaint.

REASON FOR GRANTING THE WRIT

Congress has clearly stated the power of the courts of the United States to award and tax counsel fees and costs (Title 28, Sections 1920 and 1923, United States Code).

The applicability of the aforesaid statutes to the United States District Court for the District of Columbia is furthermore specifically stated in the District of Columbia Code (Sections 11-1501; 11-1502).

The United States Circuit Court of Appeals for the District of Columbia has heretofore defined the general equity power of the District Court to award fees and costs:

> "In equitable actions costs may be charged to either party in the discretion of the District Court, but the District Code specifies the compensation which may be taxed as costs and provides that no other costs may be so taxed unless provided by law." *Cahill* v. *Bryan*, 87 U.S. App. D.C., 271; 184 F. 2d 277.

There has been no enlargement or change of power of the District Court in this regard since the aforesaid decision was handed down in 1950.

In conferring upon the United States District Court for the District of Columbia jurisdiction to entertain domestic relations cases Congress did "provide by law" certain well defined, delimited and circumscribed additional powers respecting taxing of attorneys' fees in that class of cases.

> By Title 16-410 (D.C. Code) the District Court is empowered to award the *wife* counsel fees in a suit for divorce or annulment. (Emphasis supplied)

> By Title 16-413 (D.C. Code) the District Court may retain jurisdiction of the case *after awarding a decree of divorce* in any case granting alimony and providing for the care and custody of children for any future orders in those respects. (Emphasis supplied)
>
> By Section 16-415 (D.C. Code) the Court on application of the *wife*, may decree that the *husband* pay her, periodically, such sums as would be allowed to her as pendente lite or permanent alimony in case of divorce for the maintenance of herself and the minor children *committed to her care by the court*, and the payment thereof may be enforced in the same manner as directed in regard to the payment of permanent alimony (Sections 16-410 and 16-411 D.C. Code). (Emphasis supplied.)

The clear intent of the foregoing statutes is to give assistance to women under coverture. By their very language (which is exceedingly plain) they are limited to *wives.*

But a *divorced woman* is no longer a *wife.* Webster's New International Dictionary defines the word "wife" thus—

> "a woman united to a man in lawful wedlock: a married woman: spouse—correlative of husband"

The Congress clearly recognized this when it provided (by Section 16-413 D.C. Code, *supra*) for the District Court's retention of jurisdiction in cases in which alimony and maintenance of children were granted along with an absolute divorce. Otherwise this statute would be needless.

The decision of the United States Circuit Court of Appeals for the District of Columbia leaves the petitioner (and all other divorced men who, relying upon the State's assertion of power to dissolve the marriage bond, have remarried) in the anomalous position of having two wives (at least for limited purposes) with the approval of a United States Court. Such a situation cannot be permitted to exist.

The law of this case, if it be permitted to stand, will be a provocative incentive to divorced women to harass and embarrass their quondam husbands and place a powerful weapon in their hands for that purpose, with the resultant burden of litigation—much of which will inevitably be found to be groundless—upon the courts of this jurisdiction.

It is respectfully urged that the field of family law, already confused as it is, should not be further confused by the present law of this case.

In addition to the above very sound reasons for reversal, the total lack of power of the United States District Court for the District of Columbia to make the award of the $250 counsel fee remains the most imperative reason for reversal.

It is respectfully submitted that the decision of the lower court should forthwith be reversed.

Respectfully submitted,

ELIZABETH R. YOUNG,
Counsel for Petitioner